vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1617 OF 2005
IN
SUIT NO.1957 OF 1993

Pushpakunj Co-operative Society Ltd.
& Ors. ... Plaintiffs

V/s.

M/s.Navketan Builders & Ors. ... Defendants

And

Brihanmumbai Mahanagar Palika & Ors. ... Respondents

Mr.F.Devitre with Ms.Renu Parekh for Plaintiff
Mr.H.C. Pimple with R.Y. Sirsikar for Respondent No.1
Mr.S.C. Shastri for Respondent Nos.2 and 3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 1, 2006**

P.C.:

. The present Motion has been taken out for the following reliefs:

a) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay (already appointed as Receiver of the building 'Pushpakunj' and of the suit plot of land except original owners bungalow) by his duly appointed agents Plaintiff Nos.23, 30 and 37 be directed:

(i) to complete the internal work of the building 'Pushpakunj' beyond the 6th floor including the staircase portion and passage on the 11th floor, lift machine room and water tanks on terrace above the 11th floor or such part thereof as is found by the Respondent No.1 to be within the permissible FSI;

(ii) to complete the balance work including the external work of the building 'Pushpakunj' upto the terrace above the 11th floor to the extent which is within the permissible FSI on condition

of declaring such part of the 11th floor as transit accommodation of the said building as is required to ensure that the building area is within the permissible FSI;

b) that pending the hearing and final disposal of the suit;

(i) the Respondent No.1 be directed by an order of this Hon'ble Court to consider and grant the necessary permissions to the Court Receiver through his duly appointed agents Plaintiff nos.23, 30 and 37 to carry out works as set out in prayer clause (a) above;

(ii) this Hon'ble Court be pleased to appoint the Court Receiver, High Court Bombay or such other fit and proper person as this Hon'ble Court may deem fit as the Receiver also of the original owners bungalow (shown in red colour boundary line on the sketch plan annexed to the Affidavit in Support as Exhibit 1A') with all powers under Order XI, Rule 1 of the code of Civil Procedure, 1908;

(iii) this Hon'ble Court be pleased to direct the Respondent No.1 to consider and grant permission to treat the said original owners bungalow (marked 'red' on the plan sketch annexed to the Affidavit in Support as Exhibit "A") as a temporary transit accommodation structure (subject to eventual demolition)for the purpose of computing the permissible FSI of the building "Pushpakunj";

c) that pending the hearing and final disposal of the suit the Court Receiver, High Court, Bombay (already appointed as Receiver as above) be directed:

(i) upon the issuance of the Occupation Certificate by Respondent No.1, to hand over possession to Respondent Nos.2 to 6 of the flats bearing nos. 31, 32, 33 and 34 on the third floor of the building 'Pushpakunj' reserved for them under the order dated 10 February, 1998 passed in Notice of Motion No.3456 of 1997 and

(ii) after shifting Respondent Nos.2 to 6 as in (i) above, to demolish the original owner's bungalow (marked 'red' on the sketch plan annexed to the Affidavit in Support as Exhibit 'A') in accordance with the requirements of the sanctioned plan for the development of the said plot;

d) for ad-interim reliefs in terms of prayer (a) to

(c) above;

e) ...

f) ....

2. The plaintiff-society and the other members i.e., the flat purchasers of the society have approached this Court for the aforesaid reliefs. By order dated 10.2.1980 passed by this Court in Notice of Motion No.3456 of 1997, certain directions were issued whereby some of the plaintiffs were appointed as agents of the Court Receiver to complete the building upto the 6th floor and to make it habitable. This order was passed in view of the fact that the building has been constructed some time in 1980 by the builder and the plaintiffs were not put in possession of their flats even after expending huge amounts towards the purchase of these flats.

3. Today, the plaintiffs have obtained additional FSI which permits them to occupy flats upto the 9th floor. The plaintiffs contend that if the owners bungalow is demolished, the additional FSI would be made available to them and they would then be able to occupy the 10th floor as well. Certain other structures in the suit property would also have to be demolished for the 11th floor to be regularised.

4. The Plaintiffs contend that the 3rd floor of the building has been reserved for the owners as directed by

this Court in its earlier orders. The plaintiffs who are ready and willing to make the 3rd floor habitable by carrying out internal work on these floors like installing electrical fittings, plumbing, painting, etc. The Court Receiver today has been appointed for the entire property except the owners' bungalow. The plaintiffs contend that it would therefore, be appropriate to appoint the Court Receiver for the owners' bungalow as well so that the landlords could be easily moved to the 3rd floor of the building once it is complete.

5. It appears that there is a dispute between the sons and daughters of the original owner of the bungalow, which is pending in this Court. The daughters have no objection if the Court Receiver is appointed for the bungalow and they are allowed to occupy the 3rd floor as and when it is complete. The sons of the owner, though served, have not appeared before me.

6. In the circumstances, the following order is passed:

(i) The Receiver is appointed in respect of the original owner's bungalow. However, the possession of the bungalow will remain with the owners till such time as the 3rd floor is made habitable and internal fittings are installed. The Court Receiver to ensure that once the 3rd

floor is made available, the owners shift to the 3rd floor reserved for them.

(ii) The building has been constructed upto 11th floor which is in excess of the FSI available today. The Receiver through his agents i.e., Plaintiff Nos.23, 30 and 37 will carry out the external repairs to the entire building as mentioned in paragraph 2 at page 46 Exhibit F to the Motion. The Receiver may carry out the repairs upto the 10th floor internally as well though his agents.

(iii) The nature of the internal work to be carried out shall be in accordance with the statement handed in and marked as Exhibit 'X' for identification which indicates the work to be carried out upto the 6th floor. Such similar work may be carried out from the 7th floor to the 10th floor. No other work shall be carried out internally.

(iv) The 11th floor shall be disabled and there shall be no occupation of the 11th floor. No internal work on that floor shall be carried out.

(v) The plaintiffs may occupy the building after it is made habitable upto the 9th floor. The

10th floor shall not be occupied without the leave of this Court.

(vi) Liberty to apply for further and other reliefs including prayer clause (c).

7. Further the plaintiffs will apply for occupation certificate in accordance with law with the Municipal Corporation.

8. It is made clear that this order is passed only because of the peculiar facts and circumstances in the present case and this order will not act as a precedent in any other case.